

REMARKS

This responds to the Office Action dated February 28, 2006, and the references cited therewith.

Claims 1 and 15 are amended. Claims 1-28 are now pending in this application.

§102 and §103 Rejection of the Claims

Claims 1-6, 14-20 and 28 were rejected under 35 U.S.C. § 102(e) as being anticipated by Levine (U.S. Patent No. 6,865,414). Claims 7-10 and 21-24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Levine (U.S. Patent No. 6,865,414). The rejections are traversed and reconsideration is respectfully requested.

In rejecting claims 1-6, 14-20 and 28 were rejected under 35 U.S.C. § 102(e), the examiner points to Figs. 3-5 and 7 and to col. 11, line 61 to col. 12, line 3 of the Levine reference as disclosing the computation of a heart rate variability metric. Applicant has examined those cited portions of Levine and found that they only relate to the amplitude of sensed signals and to the sensing thresholds for differentiating between sinus and non-sinus events. In rejecting claims 11-13 and 25-27, the examiner points to Figs. 3 and 6 and to col. 15, lines 3-5 as disclosing time domain filtering of filtered BB intervals. Applicant finds no such disclosure as the cited portion of the reference only mentions the sense amplifiers and bandpass filtering of sensed signals, not filtering of BB intervals. Applicant finds no teaching or suggestion in the Levine reference for computing a heart rate variability metric from filtered BB intervals, where a heart rate variability metric is understood by those of ordinary skill in the art to be some parameter that reflects a particular frequency component of the variability of the intervals between heart beats.

Independent claims 1 and 15 have been amended herein to specify that the claimed method and device, respectively, include the step, or capability, of computing heart rate variability metrics from the filtered BB intervals that are reflective of a higher and a lower frequency component of the filtered BB intervals. Applicant respectfully submits that claims 1 and 15 are patentable over the prior art of record.

Applicant also wishes to particularly point out that no discussion relating to the use and updating of a buffer for filtering BB intervals as recited, for example, by claims 9 and 23 is found in the Levine reference as asserted by the examiner. In rejecting claims 9 and 23, the examiner points to col.12, lines 31-46 of Levine as disclosing excluding the present BB interval as indeterminate if a first-in-first-out buffer for containing a maximum number N of preceding BB intervals contains less than N intervals. That cited portion of the reference, however, does not appear to relate to the subject matter recited by claims 9 and 23 in any way. In any event, the recitations of the remaining pending dependent claims 2-14 and 16-18 include additional limitations to the subject matter recited by independent claims 1 or 15 as amended herein, which recitations are also asserted to be neither taught nor suggested by the prior art of record.

Timely Traversal of Assertions of Things Known to One of Skill in the Art

Applicant generally traverses the assertion of things "known to one of skill in the art" as a form of Official Notice and requests a reference to support such assertions pursuant to MPEP 2144.03, or their withdrawal in the next official communication.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (847) 432-7302 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,


JOHN A. DYJACH ET AL.

By their Representatives,

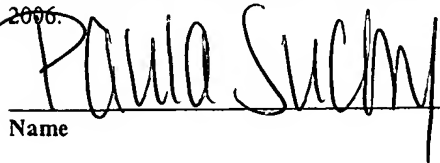
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(847) 432-7302

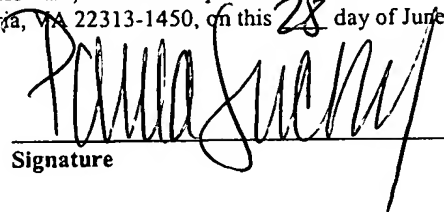
Date 6-28-06

By


J. Kevin Parker
Reg. No. 33,024

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner for Patents, MS: Amendment, P.O. Box 1450, Alexandria, VA 22313-1450, on this 28 day of June, 2006.


Name


Signature